

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ELAINE S WENDEL

:

Plaintiff,

:

Civil Action No. 15-cv-00936

-v-

:

MULLOOLY, JEFFREY, ROONEY &
FLYNN, LLP

Defendant.

:

AFFIRMATION OF TIMOTHY HILLER

Timothy Hiller, under penalties of perjury, states that the following statements are true and correct:

1. I am one of the attorneys for Plaintiff-Appellant.
2. Plaintiff's response to Defendant's motion to dismiss is due on December 28, 2015.
3. Plaintiff opposes Defendant's motion to dismiss.
4. Plaintiff will be imminently filing a motion to amend its complaint. If granted, the issue of whether Plaintiff's first complaint could survive a 12(b)(6) attack would be moot.
5. In furtherance of preserving judicial economy, Plaintiff requests that this court hold Defendant's motion to dismiss Plaintiff's original complaint in abeyance until the court has disposed of Plaintiff's motion to amend.
6. Counsel for Defendant has withheld consent to this motion pending a chance to review Plaintiff's motion to amend, an pending an opportunity to confer with his clients.

WHEREFORE, the Plaintiff moves this Court to hold Defendant's first motion to dismiss in abeyance, pending resolution of Plaintiff's motion to amend.

DATED: December 28, 2015

/s/ Timothy Hiller

Timothy Hiller

Law Offices of Kenneth Hiller, PLLC

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